

### REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following amendments and remarks is respectfully requested. No new matter has been introduced. Claims 1 and 6 have been amended. Claim 1 has been amended to incorporate claim 3 and require that the elastic wall is substantially adjacent to a flat wall when in an unstretched state. For support see page 8, lines 19-21 and Figs. 2, 4, 5 and 6. Claim 6 has been amended to incorporate independent claim 1 and dependent claim 2. A letter to the Master Draftsman accompanies this amendment with corrections to the drawings.

#### Drawings

The drawings have been objected to as failing to comply with 37 C.F.R. 1.84(p)(5) because they include the following reference signs not mentioned in the description: 28, 44, 55, 57, and 58. Accordingly, these reference numbers have been deleted from the figures. In particular, reference numbers 28 and 44 have been deleted from Fig. 2, reference numbers 28, 55, 57, and 59 have been deleted from Fig. 5, and reference numbers 55 and 59 have been deleted from Fig. 6.

A letter to the Master Draftsman accompanies this amendment with corrections to the drawings.

#### Rejection under 35 U.S.C. §102

Claims 1 and 2 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,885,239 (Headley et al., hereinafter Headley). Amended independent claim 1 is directed towards a fluid processing disposable set. The set requires a variable-volume chamber in fluid communication with a fluid port. The chamber is defined by a fixed wall and an elastic wall. The elastic wall is formed by a convoluted diaphragm and is substantially adjacent a flat wall when in an unstretched state.

In contrast, Headley discloses an elastic wall 31 formed by a convoluted diaphragm (see Headley at Figs. 20-23 and col. 23, line 46; col. 25, lines 46-47; and col. 27, lines 15-16). However, the elastic wall in Headley, when in an unstretched state, is adjacent two parallel walls (see Headley at Figs. 20-23). This is different from claim 1, which requires that the elastic wall

is substantially adjacent a flat wall when in an unstretched state. Headley neither teaches nor suggests an elastic wall substantially adjacent a flat wall, as required by amended claim 1.

Since Headley does not teach every element of amended independent claim 1, claim 1, as amended, is not anticipated under 35 U.S.C. §102(b) by Headley and is allowable. Dependent claim 2 depends on and incorporate independent claim 1, and is allowable for the same reason as discussed above with regard to claim 1, and is further allowable in view of the additional limitations set forth therein.

Claims 1 and 6 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,608,164 (Neu). Amended claim 1, as discussed above, requires that the elastic wall is formed by a convoluted diaphragm.

In contrast, Neu discloses an elastic wall formed by a diaphragm that varies in thickness (see Neu at col. 5, lines 54-56), unlike amended claim 1 which requires that the elastic wall is formed by a convoluted diaphragm. Neu neither teaches nor suggests an elastic wall that is formed by a convoluted diaphragm, as required by amended claim 1.

Since Neu does not teach every element of amended independent claim 1, claim 1, as amended, is not anticipated under 35 U.S.C. §102(b) by Headley and is allowable.

Claim 6, as amended, is directed at a fluid processing disposable set. The set includes, in part, a variable-volume chamber in fluid communication with a fluid port. The chamber is defined by a fixed wall and an elastic wall, the elastic wall formed by a shaped diaphragm. A rotary seal is coupled to the fluid port, the rotary seal fluidly coupled to the chamber. The shaped diaphragm is essentially planar in an unstretched position, the diaphragm varying in thickness.

In contrast, Neu discloses a fixed wall 1 and an elastic wall 17 defining a variable volume chamber in communication with a fluid port (see Neu at Figs. 4 and 12). However, Neu fails to disclose or teach a rotary seal coupled to the fluid port.

Since Neu does not teach every element of amended independent claim 6, claim 6, as amended, is not anticipated under 35 U.S.C. §102(b) by Neu and is allowable.

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,179,807 (Asmussen). Amended claim 1, as discussed above, requires an elastic wall that is substantially adjacent a flat wall when in an unstretched state.

In contrast, Asmussen discloses an elastic wall 9 that is disposed around the inside of a bowl 1 (see Asmussen at col. 1, lines 40-44 and the disclosed figure). This is different from

claim 1, which requires an elastic wall that is substantially adjacent a flat wall when in an unstretched state. Asmussen neither teaches nor suggests an elastic wall substantially adjacent a flat wall when in an unstretched state, as required by amended claim 1.

Since Asmussen does not teach every element of amended independent claim 1, claim 1, as amended, is not anticipated under 35 U.S.C. §102(b) by Asmussen and is allowable. Dependent claim 2, 4, and 5 depend on and incorporate independent claim 1, and is allowable for the same reason as discussed above with regard to claim 1, and is further allowable in view of the additional limitations set forth therein

Claims 1, 6, and 7 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 1,885, 457 (Lord et al., hereinafter Lord). Amended claim 1, as discussed above, requires that the elastic wall is formed by a convoluted diaphragm.

In contrast, Lord discloses an elastic wall 7 formed by a diaphragm that varies in thickness (see Lord at page 1, lines 47-53 and Figs. 1 and 2), unlike amended claim 1 which requires that the elastic wall is formed by a convoluted diaphragm. Lord neither teaches nor suggests an elastic wall that is formed by a convoluted diaphragm, as required by amended claim 1.

Since Lord does not teach every element of amended claim 1, claim 1, as amended, is not anticipated under 35 U.S.C. §102(b) by Lord and is allowable.

Claim 6, as amended, requires a variable-volume chamber in fluid communication with a fluid port. The chamber is defined by a fixed wall and an elastic wall, the elastic wall formed by a shaped diaphragm. A rotary seal is coupled to the fluid port, the rotary seal fluidly coupled to the chamber.

In contrast, Lord discloses a fixed wall 1 and/or 2 and an elastic wall 7 defining a variable volume chamber in communication with a fluid port 5 or 6 (see Lord at page 1, lines 47-53). However, Lord fails to disclose or teach a rotary seal coupled to either fluid port.

Since Lord does not teach every element of amended independent claim 6, claim 6, as amended, is not anticipated under 35 U.S.C. §102(b) by Lord and is allowable. Dependent claim 7 depends on and incorporate independent claim 6, and is allowable for the same reason as discussed above with regard to claim 6, and is further allowable in view of the additional limitations set forth therein.

Reconsideration and allowance of claims 1, 2, and 4-7 in view of the above discussion is therefore requested.

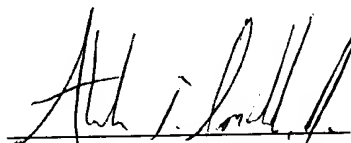
Attached hereto is a marked-up version of the changes made to the claims by the current amendment. The attached page is captioned "Version with markings to show changes made."

It is believed that a one month extension of time is required for this matter. Applicant hereby petitions for same and requests that any extension or other fee required for timely consideration of this application be charged to Deposit Account No. 19-4972.

It is believed that the application is now in order for allowance. If the Examiner has any questions as to the allowability of the currently pending claims or if there are any defects which need to be corrected, the Examiner is invited to speak to the Applicant's counsel at the telephone number given below.

DATE: November 18, 2002

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. J. Smolenski, Jr.", written over a horizontal line.

Alexander J. Smolenski, Jr.  
Registration No. 47,953  
Attorney for Applicant

Bromberg & Sunstein LLP  
125 Summer Street  
Boston, MA 02110-1618  
(617) 443-9292  
01611/00122 227052.1

## VERSION WITH MARKINGS TO SHOW CHANGES MADE

### In the Claims:

Claim 3 has been cancelled and claims 1 and 6 have been amended as follows:

1. (Once Amended) A fluid processing disposable set comprising:
  - a fluid port adapted to couple with a container; and
  - a variable-volume chamber in fluid communication with the fluid port, the chamber defined by a fixed wall and an elastic wall, the elastic wall formed by a convoluted [shaped] diaphragm, wherein the elastic wall is substantially adjacent a flat wall when in an unstretched state.
  
6. (Once Amended) A fluid processing disposable set comprising:
  - a fluid port adapted to couple with a container; and
  - a variable-volume chamber in fluid communication with the fluid port, the chamber defined by a fixed wall and an elastic wall, the elastic wall formed by a shaped diaphragm;
  - a rotary seal coupled to the fluid port, the rotary seal fluidly coupled to the chamber,[A fluid processing disposable set according to claim 1,] wherein the shaped diaphragm is essentially planar in an unstretched position, the diaphragm varying in thickness.